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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

Nos. 780 and 781

WILLIAM J. DRURY,

Petitioner,

vs.

STEPHEN E. HURLEY, JOHN W. CLARK and ALBERT E. WILLIAMS, Civil Service Commissioners of the City of Chicago.

and

THOMAS E. CONNELLY,

Petitioner,

vs.

STEPHEN E. HURLEY, JOHN W. CLARK and ALBERT E. WILLIAMS, Civil Service Commissioners of the City of Chicago.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioners.

ODE L. RANKIN,
Of Counsel.

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Petition to review Records of Appellate Court of Illinois for the First District, Chicago Illinois (Nisi Prius Nos. 44764 and 44765).

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioners William J. Drury and Thomas E. Connelly, each citizens of the United States of America, and of

the State of Illinois and residents of the City of Chicago, County of Cook and State of Illinois come now by their counsel, Luis Kutner and respectfully show unto the court as follows:

They seek here to have reviewed judgments entered against them by the Appellate Court of Illinois for the First District thereof, at Chicago, Illinois, upon appeal by respondents from the Superior Court of Cook County, Illinois, which judgments became final in said Appellate Court when the Supreme Court of Illinois the highest judicial tribunal of that State, denied their petitions for leave to appeal thereto from said Appellate Court.

Petitioners were Lieutenant and Captain of Police, respectively, of the City of Chicago and were ordered discharged by the Civil Service Commissioners of Chicago respondents for the sole reason that petitioners had refused to sign immunity waivers when brought before the grand jury of Cook County in a proceedings instituted by the State's Attorney of Cook County in which they were subjects of the inquiry upon a charge of which they were found by said Commission to be innocent, and when being prosecuted by a hostile State's Attorney seeking to destroy them professionally, and to have them discharged from their offices.

Procedural History.

These cases have a common origin in the Civil Service Commission of the City of Chicago, Illinois. They involve the same ultimate facts and present the same questions of law for decision. Separate complaints were filed before said Commission against petitioners charging each with conduct unbecoming a police officer. The charges being the same, petitioners were, by stipulation, tried together

and a common or single transcript of the proceedings was preserved by the Commission. Each officer was discharged upon the same ground, but by separate orders.

Each defendant filed his own petition for certiorari in the Superior Court of Cook County, a court of general jurisdiction, and separate records were returned to each writ, except this, that a common transcript of the proceedings at the trial was filed in the William J. Drury case and by order was allowed to stand as a return to the Thomas E. Connelly petition and the two cases were heard together, but separate judgments rendered. The original transcript of proceedings is attached to the Drury record.

The Superior Court reversed each order of the Civil Service Commission, that is, quashed its record in each case. From each judgment of the Superior Court the Civil Service Commission appealed to the Supreme Court of Illinois, the highest tribunal of that state, and separate records were there filed, except that, the transcript of proceedings appeared in the William J. Drury record only.

The Supreme Court of Illinois held that the cases presented no grounds for a direct appeal to that Court by respondents and transferred the appeals to the Appellate Court of Illinois for the First District thereof for disposition (see *Drury* v. *Hurley*, 402 Ill. 243; *Connely* v. Hurley, 402 Ill. 236).

The cases were heard together in the Appellate Court and the judgments of the Superior Court were aech reversed. One full opinion was rendered in the *William J. Drury* case disposing of the questions presented and a memorandum opinion only was filed in the *Thomas E. Connely* case adopting the opinion in the *Drury* case. (*Drury* v. *Hurley*, 339 Ill. App. 33; *Connelly* v. *Hurley*, 339 Ill. App. 54).

Petitions for leave to appeal from the judgments of the Appellate Court were filed by petitioners in the Supreme Court of Illinois, which court, upon consideration thereof, denied leave to appeal in each case thereby leaving the judgments of the Appellate Court as the court of last resort.

Separate records are filed here but for convenience of this Court one petition is here filed applicable to both cases.

SUMMARY STATEMENT OF MATTER INVOLVED.

Lieutenant William J. Drury and Captain Thomas E. Connelly of the Chicago Police force, were discharged by order of the Civil Service Commission of Chicago on the sole ground that, though admittedly acting in good faith, and innocent of wrongdoing, they had refused to sign an immunity waiver when brought before the grand jury of Cook County, Illinois, by a hostile State's Attorney, actively seeking their indictment upon testimony of known perjurers, where petitioners were the subject of inquiry.

The Civil Service Commission held that petitioners had the right "to refuse to sign an immunity waiver and thus claim the constitutional privilege against self-incrimination" but concluded that

> "it is fundamentally inconsistent with the duties of a police officer to refuse to sign an immunity waiver in advance of testifying before a grand jury or a court in a criminal case" (Drury Abstract, 42).

The Superior Court of Cook County granted certiorari and quashed each of the records on authority of *In re Holland*, 377 Ill. 346, where it was held that an effort of a hostile State's Attorney to turn the grand jury investigation against the witness and investigate him, instead of the supposed crime, was just cause for refusing to sign an immunity waiver and resisting the effort of the State's Attorney to incriminate him.

The Appellate Court of Illinois for the First District thereof, pointedly held:

> "A police officer by reason of his special status, duties and responsibility may not invoke his constitution-

al privilege against self incrimination in matters touching upon his occupation without being guilty of a breach of duty on his part by reason of such refusal."

Factual History of Matters Involved.

Petitioner William J. Drury was a Lieutenant of Police of the City of Chicago and Thomas E. Connelly was a Police Captain, each with a long and honorable record of service.

In the latter part of September, 1946, Lieutenant Drury and Captain Connelly were assigned by the Commissioner of Police to the investigation and solution of about eighty unsolved Chicago murders among which was the James M. Ragen murder.

Drury and Connelly selected for immediate investigation the highway racketeering murder of said Ragen owner of a National Racing News Service who, while driving his automobile on one of Chicago's Streets, was shot by assasins in gangland fashion from a waylaying truck.

Petitioners have extraordinary and exemplary police service records and are known throughout hte United States for the relentless war on the national crime syndicate.

Petitioner WILLIAM DRURY in twenty-six years of police service arrested more gun-carrying gansters than any other single Chicago policeman. He holds the LAMBERT TREE Gold Medal for bravery, the highest award in the Police Department for killing an armed ex-convict who tried to assassinate him (Drury) in a street robbery. He also was the recipient of thirteen EXTRA AWARDS OF COMPENSATION and many credible mentions for extremely commendable and efficient police work. He has been sued, transfererd, "benched" shot at, received threatening phone calls, has been harrassed at all hours at his home by gangsters. After making important gangster arrests he has been illegally and unlawfully suspended twice from the Police Department. He was repeatedly reinstated.

Petitioner THOMAS CONNELLY has been a partner to Petitioner DRURY and together they are known as "the Watch Dogs of Chicago's Loop". Their presence on any given beat has been publicly acclaimed as meaning the exodus of gangsters and hoodlums in that area.

Petitioner CONNELLY was the recipient of six EXTRA COMPENSATIONS for meritorious services. He has received fifteen creditable mentions for extraordinary and efficient police service.

During the next several months Drury and Connelly worked actively on the Ragen case under the direction of the Commissioner of Police, reported to him frequently, keeping him accurately advised as to their progress.

Previous, on July 8, 1946, William J. Tuohy, State's Attorney, and Wilbert F. Crowley, First Assistant State's Attorney, of Cook County, Illinois, then investigating the Ragen murder, questioned Jack Guzik, an underworld character reputedly with gambling connections, and suspected of implication in said crime, and who had formerly been convicted of a Federal income tax violation. Guzik denied any knowledge of the Ragen shooting.

On November 25, 1946, and during their investigation of the Ragen case, Lieutenant Drury and Captain Connelly saw Guzik near 21 East Adams Street, Chicago, Illinois, and arrested him. This arrest appears to have been spontaneous and unplanned and was made around 2 P.M. on that day.

News of Guzik's arrest was flashed to his counsel and a habeas corpus petition was immediately filed on Guzik's behalf in the Criminal Court of Cook County. After a hearing at which the State was represented by the State's Attorney, Guzik was released by order of the Criminal Court of Cook County, Illinois at 4:00 P.M. on the same day for lack of evidence justifying his further detention.

As Guzik was leaving the Court room he said to Drury, referring to Drury and Connelly "I will get the both of you fired" (Drury, Record 2003; Connelly, Record 1592).

Thereupon a local newspaper carried the story of a purported interview with a Chicagoan prominant in crime prevention activities, which by implication involved a criticism of the State's Attorney's office for the speed with which Guzik had been released.

State's Attorney Tuohy thereupon called the Commissioner of Police and requested that Lieutenant Drury and Captain Connelly be sent to his office on the morning of November 27, 1947. These officers were not working out of the State's Attorney's office nor under his direction but solely and directly under the Commissioner of Police. Pursuant to the order of the Commissioner they went to the office of the State's Attorney.

Upon their arrival at the State's Attorney's office each was separately questioned, with a court reporter at hand chiefly as to Guzik and his possible connection with the Ragen shooting or other violations of law, from which it became evident that petitioners had no evidence as to Guzik's connection with the Ragen murder.

At the conclusion of the formal questioning of each police officer there was some off-the-record heated discussion. Mr. Tuohy testified that when Captain Connelly got up to leave Connelly said, that he supposed that he was in bad because of a former suspension which the Appellate Court had reversed, and that he, Tuohy, replied:

> "Just a moment, Captain, I had nothing to do with your former suspension and it has nothing to do with this hearing. Just remember this, that if I should ever have occasion to take you or any other police officer to the Trial Board, I will have the evidence that will make the charges stick."

Captain Connelly testified that State's Attorney Tuohy said to him that he had better watch his step or "I'll take you before the trial board and fire you, and you won't get back; now, get out, do you hear that." (Connelly, Record 1594).

Captain Connelly promptly repeated this conversation to Lieutenant Drury and soon afterwards they both reported their interviews had in the State's Attorney's office to the

Commissioner of Police who advised both officers not to get excited. Both were obviously disturbed by what seemed to them a gratiutious affront, not calculated to aid them in the solution of this gangland murder, but were told by the Police Commissioner to proceed with their investigation.

Drury and Connelly continued their investigation of the Ragen murder and interviewed, and ultimately were instrumental in obtaining signed statements from, Russell, White and one Davidson who had been at the scene of the Ragen shooting each of whom testified on their first appearance before the Grand Jury on March 14, 1947, that they could identify persons who were in the truck from which Ragen had been shot.

By the commissioner's directions the investigation was carried on with the strictest secrecy and the time for the bringing of the witnesses before the Grand Jury was dictated by the Commissioner of Police. The witnesses were finally brought before the Grand Jury in March, 1947 and an indictment for the murder of Ragen was returned against Block, Patrick and Yaris on March 17, 1947. From then on the matter was in charge of the State's Attorney's office.

Upon their arrest under said indictment Block, Patrick and Yaris employed attorneys Bieber & Brodkin and Morris Meyers as their attorneys. Bieber & Brodkin had represented Jack Guzik in his habeas corpus matter above mentioned. The lawyers promptly interviewed the said

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As further background in consideration of this Petition, the Court is referred to the astounding factual disclosure of the national crime web: "Chicago Confidential" by Jack Lait and Lee Mortimer is a shocking and uncensored account of the truth of Chicago and national crime. The authors maintain that it is a sensational book, but nevertheless true: every statement has been checked and verified. On pages 132, 169, 185, and 233 reference is made to Petitioner Drury. On page page 233 Petitioner CONNELLY is refeired to. In fact, Chapter 29 entitled "The Brave Bulls" is an excellent reportorial presentation of the extraordinary courage and efficient police work by the petitioners.

witnesses to the murder on whose testimony the indictment had been returned and procured affidavits from witnesses Russell and White by which they changed their testimony. Those affidavits were submitted to the State's Attorney and a round of conferrences started between the attorneys for said defendants, the heads of the Police Department of Chicago, and the State's Attorney and his assistants; and beginning about March 28, 1947 news paper articles began appearing indicating that the witness White who had something of a criminal record, and the witness Russell, had recanted their testimony and had said they could not identify any of the participants in the Ragen shooting and further that White claimed that, in obtaining his former testimony, Lieutenant Drury and Captain Connelly had threatened to send him White, back to the penitentiary for a parole violation and had promised him a $5,000 reward if he would identify Block, Patrick and Yaris as such participants and that Russell sad said that they had harassed and threatened him so that finally to get rid of them he had identified pictures shown to him of supposed participants in that shooting.

As Lieutenant Drury and Captain Connelly learned of these reported changes in the stories of White and Russell, they saw the Commissioner of Police from day to day, inquiring about the situation, and asked whether or not he was investigating the matter, but obtained no satisfactory explanation and were told to await developments.

The State's Attorney on April 2, 1947, opened a hearing on the complaint of said witnesses before the same March 1947 Grand Jury commencing at 11:30 A.M. when Russell White and Davidson appeared before the Grand Jury for the second time. Russell, who had previously testified before that body that he could identify Block and Patrick as

participants in the shooting of Ragen; and White, who had previously testified before that body that he could identify Block, Yaris and Patrick as such participants, recanted their former testimony and testified that they could identify no one implicated in the Ragen shooting; but Davidson maintained that he could still identify two of the three alleged participants in that shooting whom he had identified in his earlier testimony before that body.

The Grand Jury adjourned for lunch and were to return for a further session at 3:00 o'clock. Neither Drury nor Connelly had been notified of the hearing on April 2, 1947 of the change of testimony of the witnesses of the Ragen murder or its real purpose, which was to indict Lieutenant Drury and Captain Connelly.

Unknown to either Drury or Connelly, there was then pending before the Grand Jury at the time Drury and Connelly appeared before that body on April 2, 1947, two matters, upon each of which their indictment was being sought;—one, a charge against them of subornation of perjury, and the other a charge against them for conspiracy with the three witnesses Russell, White and Davidson to procure a false indictment of Block, Patrick and Yaris for the murder of Ragen.

When Drury and Connelly arrived at the Criminal Court building there was a tension of excitement about the State's attorney's office; newspaper reporters, photographers, assistants, and others were in the halls of the building; First Assistant Crowley was holding a press conference. Crowley stuck his head out of the door of the conference room and Drury asked Crowley if he wanted to see them and Crowley replied that he would see them before the Grand Jury at 3:00 o'clock. Everyone seemed to know what was going to happen except Drury and Connelly. On

inquiry of a friendly newspaper reporter as to what it was all about they were told that they themselves were the subject matter and that they were going to be indicted by the Grand Jury.

The report of the Civil Service Commissioners states that upon the arrival of Drury and Connelly at the office of the said State's Attorney at about 2:00 P.M. on April 2, 1947 they were told by a newspaper reporter in whom they had confidence that they were about to be indicted by the Grand Jury, and they also spoke to the said First Assistant State's Attorney who told them that he did not wish to see them then but that he would see hem before the said Grand Jury at 3:00 P.M. on said date.

Neither Crowley, Austin nor Tuohy had spoken to Drury and Connelly about the purpose of the Grand Jury hearing at 3 o'clock. Nor did the Commissioner of Police tell them when he directed them to go before the Grand Jury that afternoon that the State's Attorney was seeking to indict them, though obviously the Commissioner knew it. First Assistant Crowley telephoned to Chief of Detectives Storms as soon as he learned that the witness White had given a statement to Morris Meyers changing his testimony and from then on during conferences and examinations of the witnesses the Police Department was represented and the witnesses were represented by the lawyers for the defendants accused of murder, but Drury and Connelly were not present or notified, and they could get no satisfaction from Commissioner Prendergast to whom they complained (Rec. 2050) concerning the handling of the witnesses, and articles in the press. (Drury Abst. 33).

The Commissioners also stated in their decision that the evidence indicates that the respondents Drury and Connelly had reasonable grounds for believing, when they

were takn before the Grand Jury, that thy might be subjected to criminal prosecution.

When the Grand Jury convened again after lunch at 3:00 o'clock the stage was set for the appearance of Drury and Connelly. The Grand Jury had already heard at their morning session the testimony of the three witnesses upon whose testimony the indictment for the murder of Ragen was originally voted, and upon whose testimony the Grand Jury were about to vote upon indicting Drury and Connelly.

The Stage is set.

In the Grand Jury proceedings prior to March 2, 1947 in the Ragen murder case First Assistant Crowley had examined the witnesses. In the proceedings of Mareh 2, 1947, Assistant State's Attorney Richard B. Austin, ace prosecutor (who conducted these proceedings before the Civil Service Commission), examined the witnesses. Mr. Crowley, First Assistant was present in the Grand Jury room, and participated in the proceedings.

Neither Crowley, Austin nor Tuohy had spoken to Drury and Connelly prior to the 3 o'clock hearing before the Grand Jury, concerning the witnesses, evidence, or purpose of the hearing, although it was customary to do so.

Captain Connelly was first called before the Grand Jury, sworn, asked preliminary questions of identification, and dramatically asked if he would sign an immunity waiver which was read aloud to him by Mr. Austin before the Grand Jury; but the purpose of his testimony was not disclosed to him. When he replied that he would not sign an immunity waiver without seeing the Commissioner of Police, he then was told to wait outside. The procedure was the same for petitioner Drury.

Each declined upon the ground that he wished first to see and consult his commanding officer, the Commissioner of Police, or to obtain his permission, or direction to the signing of immunity waivers.

The Commissioner was then hastily summoned before the Grand Jury and upon being informed of the refusal to sign such waivers and the circumstances thereof, stated to that body that his consent thereto was not required.

He then retired and told the two police officers that his consent to the signing of such waivers was not necessary but that if they needed it they had it. At this time Captain Connelly and Lieutenant Drury asked the Commismisioner what was meant by their being asked to sign immunity waivers and if he had learned what had transpired and who, as they put it, had tampered with their witnesses, to which he replied that he could not explain it. And the Commissioner offered no explanation.

Upon again being called before the Grand Jury in turn each of the two police officers stated that the Commissioner had given his consent, but each still refused to sign an immunity waiver and was excused without questioning.

The Commissioner then requested to be permitted to appear again before that body upon learning that the police officers still refused to sign the waivers in question, and stated to the Grand Jury that he would suspend them, which he promptly did, immediately that he went into the ante-room where Drury and Connelly were.

Both police officers had on March 17, 1947 appeared before the same Grand Jury and had testified fully as to their knowledge of the Ragen shooting, on which occasion neither had been asked to sign an immunity waiver. However, as matters developed they had, upon their second appearance was being sought in an effort to indict them.

Grand Jury Votes a No Bill.

After Drury and Connelly had been excused without being asked any questions except to identify themselves, and whether they would sign an immunity waiver, the Grand Jury proceeded to consider the evidence upon the two charges against Drury and Connelly and voted a no-bill as to the charge of subornation of perjury against Lieutenant Drury and Captain Connelly and also voted a no-bill as to the charge against them and Russell, White and Davidson of conspiring to procure a false indictment of Block, Patrick and Yaris for the murder of Ragen.

That day following the action of the Grand Jury there were conferences between State's Attorney Tuohy and his assistants as to what should further be done.

The next morning Mr. Tuohy took personal charge of the further proceedings and visited Judge Ward then Chief Justice of the Criminal Court and conferred with him about bringing contempt proceedings against the two witnesses who changed their testimony before the Grand Jury and from there went before the Grand Jury to request them to hold themselves in readiness to appear befor the Chief Justice when contempt charges might be heard. In talking to the jury he told them that perjury was hard to prove because of doubt as to which of their two stories might be true; he was asked by a grand juror whether they were free to reconsider their action in voting a no-bill on the conspiracy charge the day before.

Mr. Tuohy first said he did not know but upon being told that the no-bills had not formaly returned to the court, advised the Grand Jury, as a body, that it could still reconsider its action thereon, which it did, and later that day returned an indictment against Lieutenant Drury, Captain Connelly, Russell, White and Davidson for conspiracy to

procure a false indictment of Block, Patrick and Yaris for the murder of Ragen. The charges in that indictment were of the same general import as the conspiracy charges filed with the Civil Service Commission against Lieutenant Drury and Captain Connelly, and which the commissioners dismissed at the conclusion of the trial.

The Grand Jury having returned the indictment sought by State's Attorney Tuohy, he done nothing about the contempt proceedings concerning which he had seen the Chief Justice and about which he had spoken to the Grand Jurors, his objective having been obtained.

On April 3, 1947 prior to the return of the indictment against Drury, Connelly, Russell, and White, State's Attorney Tuohy, personally moved the Criminal Court to nolle prosse the indictment against Yaris, Block and Patrick, the three alleged murderers of Ragen, and that indictment was nolle prossed, and later in the day the three alleged murderers were released from custody, and the Grand Jury later in the day then returned the indictmnt for conspiracy against Drury, Connelly and the three witnesses. Tuohy said that the indictment against Yaris, Block and Patrick was nolle prossed as soon as he felt that "my witnesses would not produce a conviction of Block" (Rec. 3122), who, he said, was a long ways from being eliminated as "having had a piece of this Ragen killing." (Rec. 3121). And Tuohy admitted that Davidson had never changed his statement to the Grand Jury that Block, Yaris and Patrick were the three killers (Rec. 3123). Tuohy gave as his reason that he thought Block had a part in the Ragen murder but did not "want him to be put in jeopardy in a case I thought would result in acquital" (Rec. 3126).

When the indictment against Yaris, Block and Patrick,

the alleged murderers, was nolle prossed they were represented by Attorneys Bieber, Brodkin and Morris Meyers, the attorneys who secured affidavits from the witnesses Russel and White by which they changed their testimony; and they were present in the State's Attorney's office together with lawyers and witnesses, and First Assistant Crowley before the April 2 hearing before the Grand Jury. Messrs. Bieber and Brodkin were the attorneys for Jack Guzik in the Habeas Corpus proceeding to release him from the arrest made by Drury and Connelly (Drury Abst. 96-99), and Bieber and Brodkin and Morris Meyers represented Yaris, Block and Patrick at the time State's Attorney Tuohy personally nolle prossed the indictment against them on March 3, 1947 before the indictments were returned against Drury and Connelly (Rec. 2896).

The statement of the Commissioners says (Drury Abst. 36) that State's Attorney Tuohy testified that it was the practice of his office to question every accused before a case goes to the Grand Jury, if there is an opportunity to do so, and that though doubtless present, such an opportunity was not given either to Lieutenant Drury or Captain Connelly after White and Russell changed their stories and prior to the second appearance of the two police officers before the Grand Jury or their indictment by that body.

The indictment voted against Drury, Connelly, Russell, White and Davidson for conspiracy to indict Yaris, Block and Patrick by the Grand Jury after reconsideration of their vote of a no-bill upon the same day voted, April 3, 1947.

The case was docketed and called by the Chief Justice on Tuesday April 8, 1947 when White and Russell the witnesses who had recanted pleaded guilty. Drury, Con-

nelly and Davidson pleaded not guilty. Drury and Connelly demanded trial. By order of Court the case was continued and set for May 12, 1947. A trial was demanded at each term of court thereafter, commencing with the April term. It was finally nol prossed on July 30, 1947, the last day for trial within the four month rule.

The Civil Service Commissioners in their decision say that after a number of continuances at the instance of the State's Attorney, in the face of demands for trial by defendants, this conspiracy indictment was on July 30, 1947, nolle prossed upon his motion, White having in the meantime died about the middle of June, 1947, as the result of a shooting.

While said indictment was pending for trial these proceedings were commenced on April 24, 1947 and continued from time to time and the hearing of evidence commenced on August 13, 1947. The State's Attorney sought vainly to have these proceedings heard before the trial under the Criminal Court indictment (Rec. Vol. 1, pp. 439-454), could be held and while that indictment was pending.

The State's Attorney assigned Richard B. Austin one of his able prosecutors to the trial of these proceedings and he was permitted by the commission to carry on the trial proceedings, which he did.

Specific findings of the Commission as deduced from the evidence, applicable here to both petitioners are as follows: (In the Drury case)

> (22) The respondent had on March 17, 1947 appeared before the said Grand Jury and had testified fully as to his knowledge of the shooting of Ragen and had not on that occasion been asked to sign an immunity waiver in advance of testifying before that body.

(23) As matters developed, upon the respondent's appearance before the said Grand Jury on April 2, 1947, he had reasonable grounds for believing that his testimony might be sought in an inquiry as to his own conduct in the investigation of the Ragen case and that he might be subjected to criminal prosecution as to matters pertaining thereto.

(24) On April 3, 1947, the Grand Jury returned an indictment against the respondent and Connelly, the said Russell, the said White and the said Davidson for conspiracy to procure a false indictment of the said Block, the said Patrick, and the said Yaris for the murder of Ragen.

(25) The evidence herein is insufficient to warrant a finding that the respondent was guilty of the charges of, between November 15, 1946 and March 19, 1947, unlawfully, wilfully and maliciously conspiring and agreeing with Connelly, the said White and the said Russell, to the end that indictments for the offense of murder be caused, procured and charged against the said Yaris, the said Block, and the said Patrick or of unlawfully, willfully, knowingly and maliciously persuading and inducing the said Russell upon March 12, 1947, to falsely identify and point out at the Detective Bureau of the City of Chicago, the said Block as a participant in the killing of Ragen on June 24, 1946, all as charged herein, and that such charges as filed herein against the respondent should be and such charges hereby are dismissed.

(26) By reason of the action of the respondent, when he appeared before the said Grand Jury on April 2, 1947, in refusing, as he did, to sign an immunity waiver, even though he had the consent of his superior officer, the Commissioner, the respondent was guilty, as charged herein, and contrary to law and the rules of the Police Department of the City of Chicago, of conduct unbecoming a police officer and an employee of the said Department of Police.

(27) Because of the findings of fact and of guilt

> herein cause exists for the discharge and removal of the respondent as a Lieutenant of Police in the Department of Police of the City of Chicago, and as a member of such department and from the service of the City of Chicago.

and, therefore, it is hereby ordered that the respondent, William J. Drury, be here, and now discharged and removal from his said position as a Lieutenant of Police in the said department of Police, and as a member of such department, and from the service of the City of Chicago.

The order was carried out by the Commissioner of Police in due course. (The same findings and order were filed in the Connelly case).

On November 3, 1947 petitioners filed a complaints for certiorari in the Superior Court of Cook County to review the record of the Civil Service Commission and a full record with all evidence and exhibits, was returned to the Court.

Upon a full hearing the Superior Court quashed the return and reversed the order of the Commission, holding in effect that the principles announced in *In re Holland,* 377 Ill. 346, were controlling in this case.

At the conclusion of the certiorari hearing Judge Sbarbaro filed a written opinion in which he stated his viewpoint. He said.

> "This court cannot agree with the Commission, as a matter of law that the refusal of the plaintiffs (Drury and Connelly) to waive their constitutional privilege in advance of testifying, constitutes cause for removal. To agree with the Civil Service Commission's interpretation of the law is to accord the constitutional privilege to the guilty and deny it to the innocent." (Drury Abst. 131).

Judge Sbarbaro further commented upon the sufficiency of the record, saying:

> "The plaintiffs Drury and Connelly have never refused to give evidence concerning any crimes of which they may have knowledge. The charge that they unlawfully conspired to procure indictments was specifically dismissed by the Commission. Since they have been specifically absolved from any wrongdoing, how can stigma attach concerning their refusal to sign an immunity waiver regarding these matters? It is to be further noted that the record returned by the defendants discloses no provision of any law, ordinance, rule or regulation requiring a police officer to waive immunity. * * * To permit a record such as the one returned in this cause to stand would deprive the plaintiffs of their constitutional rights and do violence to the provisions of Section 12 of the Civil Service Act, prohibiting removal except for cause." (Drury Abst. 130-132).

The Superior Court, having quashed the return of the Commission to the certiorari writ,an appeal by the Commission was taken direct to the Supreme Court of Illinois where it was argued. The Supreme Court transferred the two appeals to the Appellate Court, First District, for determination (402 Ill. 236, 243).

The Appellate Court after hearing reversed the judgment of the Superior Court, commended the decision of the Commissioners, held, without qualification, that a policeman was guilty of conduct unbecoming a police officer if he refused to sign an immunity waiver, and that such conduct was "cause" for dismissal from the service, and that the Commissioners were entitled to decide what constituted "cause" for dismissal. (339 Ill. App. 33, 54.)

No surrounding, extenuating, or excusing, circumstances were considered or discussed in the opinion of the Appellate Court.

Jurisdiction.

The jurisdiction of this court is invoked under Title 28, United States Code Sections 1257 and 2101.

The Supreme Court of Illinois is the highest judicial tribunal of the State of Illinois, and by its denial of said petition for leave to Appeal the judgment of the Appellate Court of Illinois became final, and Certiorari from this court to review said judgment if allowed issues direct to the said Appellate Court of Illinois First District, at Chicago, Illinois (*Davis* v. *Aetna Acceptance Co.,* 293 U.S. 328 reversing 273 Ill. App. 628).

The claim of constitutional immunity against self incrimination was made by each officer when he refused before the Grand Jury to sign an immunity waiver (Drury Abstract 188). The report of the Civil Service Commission shows the claim of constitutional immunity against self-incrimination was made before them and that they ruled against the claim and held that a policeman could not refuse to sign away his constitutional guarantee and yet hold his position (Drury Abst. 43-44). Notwithstanding they were the subject of inquiry.

In a petition for rehearing filed before said Civil Service Commission it was urged in paragraphs 11, 12, 13, 14 and 18, thereof that the rights of petitioners under the Fifth Amendment to the United States constitution were violated by the ruling, findings and order of the Civil Service Commission, and was raised in the petitions for Certiorari in the Superior Court of Cook County (Drury Abst. 66, 67). And in paragraph 14 thereof it was pointed out that rights had been accorded to a lawyer and denied to petitioners as policemen.

The Superior Court of Cook County was asked to quash the record of the Civil Service Commission upon the ground that it violated the Fourteenth Amendment to the United States Constitution (Drury Abstract 119). And in reversing and quashing the return and record of the Civil Service Commission the Judge in his opinion held that the discharge because of refusal to waive the constitutional right against self-incrimination under the instant circumstances was not warranted (Drury Abstract 131).

The Appellate Court in its opinion the findings of the Commission and the opinion of the Superior Court Judge all recognize that the constitutional question was argued before it.

Question Presented.

I

Could a refusal to sign a waiver of constitutional guaranty against self-incrimination at the time petitioners were sworn to testify before a grand jury in a proceeding being used by a hostile states attorney to procure their indictment on a charge of which they were innocent, be made a cause for discharge from a Civil Service position as conduct unbecoming an officer.

II

May a Civil Service Commission by action or ruling make a refusal to waive immunity from self-incrimination guaranteed by the constitution a "cause" for discharge where there is no departmental rule, ordinance, statute, judicial decision, or constitutional provision authorizing such a holding?

III.

Where a legislature has made no law requiring public officials to waive immunity against self-incrimination when called before a grand jury when inquiring into public matters, is it a denial of equal protection of the law, and class legislation, for a Civil Service Commission to fix as a "cause" for dismissal, and to dismiss, a policeman who has refused to waive immunity when the legislature has fixed no standard, no defined cause in the premises?

IV.

Where a general law may be made applicable to all persons and officers similarly situated as are policemen as public officials requiring them to waive immunity when called as witnesses before an inquisitorial body examining into public matters affecting their employment, is it class legislation and a denial of equal protection of the law for a Civil Service Commission vested with power to discharge for "cause," to treat the refusal by a policeman to waive immunity when so called to testify as a cause and discharge him?

Reasons for the Allowance of the Writ.

I.

This is the only decision in the several states so far as found where it has been flatly decided and without exception for circumstance, that it is a breach of duty for a policeman where no rule, law or constitutional provision exists requiring it to invoke the constitutional privilege against self-incrimination.

II.

Because the cases are not in harmony this court should review these cases at bar and establish the reasonable rule and its exceptions for the guidance of public officials and the protection of thousands of policemen in their positions and pension rights, and the rights of others similarly situated. If the judgment of the cases at bar are to stand in judicial literature they destroy the constitutional protection against self-incrimination to every policeman and persons with like duties and obligations, thus nullifying that provision of the constitution.

III.

By the judgment of the Illinois Appellate Court the whole basic philosophy of protection to persecuted innocence afforded by the Fifth Amendment is abandoned so far as policemen are concerned. By that ruling, no matter how unfounded the inquiry or how tyrannical the enforcing agency, a police official may shelter his innocence by invoking the basic guarantee against self-incrimination only at the expense of being wrongfully and arbitrarily removed from his office and all that goes with a long and honorable service.

IV.

The legislature of Illinois has given to the Civil Service Commission of cities a blanket power to determine what shall be "cause" for a discharge by virtue of which power the Civil Service Commission of Chicago has held specifically that if a policeman does not waive immunity when called before a grand jury he is guilty of conduct unbecoming an officer for which he may be discharged for

"cause"; which makes the decision of the commission one made at discretion like the verdict of a jury. In effect it denies equal protection of the laws as one day it may be one way and the opposite the next.

V.

The ruling of the Appellate Court of Illinois is not based upon any official order, departmental rule, statute or constitutional provision but solely upon the conveniently contrived "special status, duties and responsibility" of a police officer. It denies to such police officer protection under the Fifth Amendment upon any conceivable ground; good faith and innocence being brushed aside as of no importance.

No other case that can be found goes so far.

There is no case in the books involving a policeman appearing to have been adjudicated upon such general ground as that taken by the Appellate Court of Illinois. There are cases supported by departmental rules, statutes, and constitutions as follows:

A.

Christel v. *Police Com. of San Francisco,* 33 Cal. App. (2d) 564, 92 Pac. 2d 416, (1939), is a case involving an investigation of the San Francisco police department, the officer had refused to testify before the Grand Jury, claiming his constitutional privilege. He was discharged under a departmental rule that required testimony without reservation before a grand jury. He was discharged against the claim that the rule was invalid, upon the ground of unbecoming conduct. The order of discharge was there affirmed.

In *Cateline* v. *McClellan,* 282 N. Y. 166, 25 N. E. (2d) 972, (1940), it there was in question conduct of policemen prior to the effective date of a new constitution which provided for discharge of public officials who should refuse to sign immunity waivers. It was held that the constitutional provision was retrospective, and valid as to the matters ante dating the new constitution.

B.

In *Goldwyn* v. *Board of Higher Education,* 37 N. Y. S. (2d) 34 (1942), a high school teacher refused to sign an immunity waiver when summoned to appear before a Joint Inquisition Committee. She was not sworn and was discharged under a provision of the New York charter which so provided. The court approved.

C.

Exceptions to the cases involving constitutions, statutes, and rules have been noted in cases involving lawyers where before the Grand Jury, Court, or Committee, their own conduct became or was the subject of inquiry.

In the case of *In re Grae,* 282 N. Y. 428, 26 N. E. (2d) 963, an inquiry had been ordered by the Appellate Division of the New York System of Courts into alleged unlawful and unethical practices ("ambulance chasing", solicitation, etc.,) impairing the administration of justice, and Michael H. Grae, an attorney, was called before a Special term of the Supreme Court designated to conduct the inquiry. He refused to waive immunity but did not refuse to testify. For such refusal he was ordered to be suspended from practice for six months for conduct prejudicial to the administration of justice. Grae had justly feared an unfriendly attitude of individuals back of the movement and being innocent refused to sign an immunity

waiver. The court said that "the privilege against self-incrimination is a constitutional guaranty of a fundamental personal right," and that in refusing to sign an immunity waiver Grae "was within his legal right," and that the disciplinary proceeding "wherein the single offense charged is his refusal to yield a constitutional privilege, is unwarrantable".

In the case of *In re Holland,* 377 Ill. 346, Holland a judge of the Municipal Court of Chicago had refused to sign an immunity waiver but testified in the grand jury investigation of the gangster murder of one O'Hare with whom Holland had had some business dealings. Holland answered all questions as to O'Hare death but became impressed with the thought that the State's Attorney, admittedly hostile, was set upon investigating him instead of he O'Hare murder and hereupon refused, upon constitutional grounds, to answer questions concerning his personal matters with O'Hare. The Chief Justice of the Criminal Court refused to hold Judge Holland in contempt. Whereup the Chicago Bar Association commenced a proceeding in the Supreme Court of Illinois to have Judge Holland disciplined, claiming that he was lacking in good faith when he claimed constitutional immunity.

The Supreme Court stated the contention of the Chicago Bar Association in these words:

> "As we understand the position of Amicus Curiae it is a lawyer though possessing this privilege accorded by the constitution, has nevertheless an overshadowing duty to refuse to exercise it in a case such as this, and that his failure so to refuse renders him subject to discipline." (p. 352)

The Illinois Supreme Court of that doctrine said:

> "To make the general charge that the claimant of such a right is guilty of contumacious conduct if he does

not recognize as controlling those surrounding principles and forsake his right, is to measure him by an ideaism which itself may oftimes resut in injustice, a result neither legally nor morally justified. * * * The right given by the constitution being legal, is as well a moral right, since the public pionnt of view can scarcely be said to include that which is not moral. (p. 353).

D.

The question of classification that determines whether a person is denied the equal protection of the law does not depend so much upon the name of the official as it does upon the duties and character of the office he fills; a policeman is only one of a great class of public servants and characters, all of whom are similarly situated so far as waiver of immunity is concerned.

Specifications of Errors.

I.

The Appellate Court of Illinois erred in reversing the judgment of the Appellate Court.

II.

The Appellate Court of Illinois erred in holding that:

> "A police officer by reason of his special status, duties and responsibility may not invoke his constitutional privilege against self incrimination in matters touching upon his occupation without being guilty of a breach of duty on his part by reason of such refusal."

III.

The Appellate Court of Illinois erred in denying to petitioners their irghts as United States Citizens under the Fifth and Fourteenth Amendment to the Constitution of the United States.

Opinion of the Appellate Court of Illinois.

The opinion of the Appellate Court in *Drury* v. *Hurley, et al*, is to be found at page 215 of the transcript in *Drury* v. *Hurley, et al*; and that of *Connelly* v. *Hurley, et al*, is at page 149 of the transcript of that record; the printed opinions appear as *Drury* v. *Hurley*, 339 Ill. App. 33 and *Connelly* v. *Hurley*, 339 Il. 54 (as shown in advance sheets of those opinions). The printed opinions of the Supreme Court of Illinois rendered in transferring those cases to the Appellate Court are *Drury* v. *Hurley*, 402 Ill. 243, and *Connelly* v. *Hurley*, 402 Ill. 236.

Date of Final Order.

The date of the final order of the Supreme Court of Illinois denying leave to appeal is January 12, 1950.

On April 5, 1950, Mr. Justice Minton entered an order extending the time within which to file this petition to April 27, 1950, in each case.

Prayer.

Wherefore petitioner prays that the court allow this petition for a Writ of Certiorari and order that the writ be granted to renew the said judgment of the Appellate Court of Illinois for the First District.

Luis Kutner,
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Chicago, Illinois
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The unrestrained holdings of the Civil Service Commission of Chicago are in violation of the Fifth Amendment to the United States Constitution and fall within the protecting scope of the Fourteenth Amendment to the United States Constitution which forbids the denial of equal protection of the laws to United States Citizens.

Argument, *post* 33.

II.

The holding of the Appellate Court of Illinois that no policeman under any circumstances may refuse to waive immunity before a grant jury and yet retain his office, is an unjust discrimination and denies equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Argument, *post* 35.

III.

A police officer who is summoned before a Grand Jury and who has just reason to suspect, fear, or believe that the public prosecutor is hostile to him, and seeking unjustly to indict and embarrass him, may of right decide for himself whether or not he will exercise his constitutional privilege, and refuse to waive immunity without violation of any duty of his office.

Argument, *post* 37.

IV.

Unless the circumstances are such as to require, in honesty and good conscience, that a right or privilege be waived, the possessor of such right be he judge, lawyer or layman is neither legally or morally guilty of a wrong in claiming that right. (From Syllabus, In re Holland, 377 Ill. 346.)

Argument, *post* 42.

V.

There is no legitimate basis for the blanket ruling of the Appellate Court that no policeman can refuse to sign an immunity waiver, no matter what the circumstances may be, and the rule here sought to be enforced applies to all public officials and should not be made for policemen alone, as such application is discriminatory and denies equal protection of the law.

Argument, *post* 51.

ARGUMENT.

I.

The unrestrained holdings of the Civil Service Commission of Chicago are in violation of the Fifth Amendment to the United States Constitution and fall within the protecting scope of the Fourteenth Amendment to the United States Constitution which forbids the denial of equal protection of the laws to United States Citizens.

The constitutional provision against compulsory self-incrimination has no expressed exceptions. But in the flow of time certain exceptions have been engrafted upon it. Departmental rules, ordinances, statutes, and even constitutions, have provided that certain public officials are not permitted to claim exemption from self-incrimination when called before bodies investigating the operation of departments, systems of government and crimes generally.

Under a departmental rule a San Francisco policeman was discharged for refusing to testify under his claim of privilege. Under the New York Constitution officials were barred from claim of immunity when their acts were the subject of investigation and under that provision, certain policemen were held to answer as against the claim against self-incrimination. And under a charter provision of New York City a school teacher was discharged because of her refusal to sign an immunity waiver.

All of those provisions and laws are based upon a principle and their application is not uncertain. In Illinois there is no rule, ordinance, law or constitutional provision, hence

whatever is done by a Civil Service Commission by way of tacking exceptions upon the constiutional exemptions from self-incrimination, must be as broad as a law would be, that is based upon principle. As the decisions now stand in Illinois the Appellate Court has ruled flatly that a policeman, however innocent and pursued by hostile prosecutors, may not avail himself of the privilege against self-incrimination if he would hold his office; while on the contrary the Supreme Court of Illinois and the New York Court of Appeals have ruled that a lawyer likewise pursued may refuse to testify when he sees that the public prosecutor is after him in a hostile way and he is innocent of wrongdoing. Obviously the policeman is being discriminaed against if it is to be understood that innocence and good faith of the policeman, and hostile and malicious conduct of a prosecutor, does not create an exception for the policeman as well as the lawyer. There can be no equal protection of the laws under such conflicing rulings. One element of the constitutional guaranty under the decision of the Appellate Court of Illinois, and the power of the Civil Service Commission to make the law fit the whim of the moment is a ready tool to accomplish that end.

We respectfully suggest that if the Opinion of the Appellate Court of Illinois is to stand as the law, then the constitutional provision that no person shall be compelled to be a witness against himself is whittled down to the whim of subordinate bodies without any legislative standard to guide their decision; and, when, under guise of unrestrained power they make class rulings, they deny equal protection of the laws, their acts fall within the protecting scope of the Fourteenth Amendment to the United States Constitution.

Without some guide or chart from the legislature a Civil Service Commission under Illinois law may excuse one of-

II.

Because the cases are not in harmony this court should review these cases at bar and establish the reasonable rule and its exceptions for the guidance of public officials and the protection of thousands of policemen in their positions and pension rights, and the rights of others similarly situated. If the judgment of the cases at bar are to stand in judicial literature they destroy the constitutional protection against self-incrimination to every policeman and persons with like duties and obligations, thus nullifying that provision of the constitution.

III.

By the judgment of the Illinois Appellate Court the whole basic philosophy of protection to persecuted innocence afforded by the Fifth Amendment is abandoned so far as policemen are concerned. By that ruling, no matter how unfounded the inquiry or how tyrannical the enforcing agency, a police official may shelter his innocence by invoking the basic guarantee against self-incrimination only at the expense of being wrongfully and arbitrarily removed from his office and all that goes with a long and honorable service.

IV.

The legislature of Illinois has given to the Civil Service Commission of cities a blanket power to determine what shall be "cause" for a discharge by virtue of which power the Civil Service Commission of Chicago has held specifically that if a policeman does not waive immunity when called before a grand jury he is guilty of conduct unbecoming an officer for which he may be discharged for

"cause"; which makes the decision of the commission one made at discretion like the verdict of a jury. In effect it denies equal protection of the laws as one day it may be one way and the opposite the next.

V.

The ruling of the Appellate Court of Illinois is not based upon any official order, departmental rule, statute or constitutional provision but solely upon the conveniently contrived "special status, duties and responsibility" of a police officer. It denies to such police officer protection under the Fifth Amendment upon any conceivable ground; good faith and innocence being brushed aside as of no importance.

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II.

The holding of the Appellate Court of Illinois that no policeman under any circumstances may refuse to waive immunity before a grant jury and yet retain his office, is an unjust discrimination and denies equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Argument, *post* 35.

III.

A police officer who is summoned before a Grand Jury and who has just reason to suspect, fear, or believe that the public prosecutor is hostile to him, and seeking unjustly to indict and embarrass him, may of right decide for himself whether or not he will exercise his constitutional privilege, and refuse to waive immunity without violation of any duty of his office.

Argument, *post* 37.

IV.

Unless the circumstances are such as to require, in honesty and good conscience, that a right or privilege be waived, the possessor of such right be he judge, lawyer or layman is neither legally or morally guilty of a wrong in claiming that right. (From Syllabus, In re Holland, 377 Ill. 346.)

Argument, *post* 42.

V.

There is no legitimate basis for the blanket ruling of the Appellate Court that no policeman can refuse to sign an immunity waiver, no matter what the circumstances may be, and the rule here sought to be enforced applies to all public officials and should not be made for policemen alone, as such application is discriminatory and denies equal protection of the law.

Argument, *post* 51.

ficer one day and discharge another the next for the same "cause", thereby making "cause" a sliding scale whereby to reward party loyalty one day and punish civil virtue the next; whereby the power to define "cause" with the decision of each charge against an officer or employee, the Commission has at hand the means by which to effectively and promptly deny equal protection of the law.

II.

The holding of the Appellate Court of Illinois that no policeman under any circumstances may refuse to waive immunity before a grand jury and yet retain his office, is an unjust discrimination and denies equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Civil Service is established for cities in Illinois by Statute and power vested in Mayors to appoint a board of three Commissioners who have power to classify positions and make rules to carry out purposes of the Act. Section 12 of that Act (An Act to regulate the Civil Service of Cities, Ill. Rev. Stat. Ch. 24½) provides that no officer or employee in the classified service appointed under the rules

> "shall be removed or discharged except for cause, except upon written charges and after an opportunity to be heard in his own defense".

The word cause is not defined so what constitutes cause becomes a question of law upon the admitted facts with each new decision of the Commission; but the court is not bound by the finding of the Civil Service Commission as to what the Commission may think the law is.

As the legislature of Illinois did not define the word "cause", in vesting Civil Service Commissioners of Cities with power to remove officers for cause, the Civil Service

Commission is left to act without regard to discretion, in the legal sense, and only the conscience of the Commissioners is its guide. Here the Commission in fact legislated and made a law for policemen only. And the Appellate Court of Illinois in confirming that ruling has singled the policemen out as one group who may not enjoy he constitutional privilege against self-incrimination. There are many other public officials who in principle occupy the same type of duty, and of trust and confidence as does the policeman. The singling out of policemen by the Civil Service Commission is a piece of class legislation that is beyond their power or jurisdiction both to make and then to enforce.

Not only is the ruling of the Civil Service Commission class legislation but it is a denial of equal protection of the laws.

There are now two lines of decision in Illinois. The case of *In re Holland,* 377 Ill. 346 where a lawyer who was under attack by a hostile State's Attorney was allowed to have advantage of the rule against self-incrimination, and the Appellate Court decision in these cases where a policeman, also under attack by a hostile State's Attorney, was denied the same privilege. And the Civil Service Commission is able to decide either way.

This discrimination was protested against before the Commission and on trial in the courts. The Superior Court judge held that the rule laid down in the *Holland* case was correct and he quashed the records of the Civil Service Commission. But now by virtue of the decision of the Appellate Court of Illinois there are two decisions, one allowing the privilege, the other denying it. By the Appellate Court decision pettiioners are denied the equal protection of the laws as well as singling them as a class and making law for them alone, and not for others similarly situated.

The result here is that the ruling of the Civil Service Commission, and judgment of the Appellate Court confirming it, violate the Fourteenth Amendment to the United States Constitution in that it denies to petitioners the equal protection of the law, singles them out as a class, and destroys their positions and takes away pension rights without due process of law.

III.

A police officer who is summoned before a Grand Jury and who has just reason to suspect, fear, or believe that the public prosecutor is hostile to him, and seeking unjustly to indict and embarrass him, may of right decide for himself whether or not he will exercise his constitutional privilege, and refuse to waive immunity without violation of any duty of his office.

In its findings and decision the Civil Service Commission weighs the duty of a police officer which he is required to perform in the interest of public safety, on one hand, as against a refusal to sign for the State's Attorney a waiver of immunity from prosecution on the other, and states the problem in this language:

> "A question arises as to whether the right of police officers to exercise this constitutional privilege is not overshadowed by their duty to aid in the investigation of crime, a duty which they are specifically employed to perform in the interest of public safety." (Drury Abst. 37).

We suggest that in so stating the legal proposition, or philosophical contemplation, the Civil Service Commission omits to state existing qualifying facts. It assumes that the Grand Jury was at the time investigating the crime of the murder of James Ragen, whereas the fact was that

the State's Attorney had mentally abandoned the prosecution of the alleged assasins of Ragen and commenced prosecution of officers Drury and Connelly who had broken the Ragen murder case wide open.

The Civil Service Commissioners did not note nor consider that the State's Attorney in a surprise move, and with obvious design had caused Captain Connelly and Lieutenant Drury to be brought before the Grand Jury forthwith to testify in a proceeding which he had instituted to indict the officers themselves,—an openly hostile act. That it was a hostile act was later evidenced by the assignment of one of his able prosecutors to follow through with the prosecution of these proceedings in an effort to have officers Drury and Connelly discharged from the Chicago police force,—not his force nor any one working for him.

Nor did the Commission note that obviously Police Commissioner Prendergast was cooperating with State's Attorney Tuohy instead of protecting his officers and that he angrily told the Grand Jury that he would order the officers to testify and later told the Grand Jury that he had suspended the officers to take effect immediately (Drury Abstract 188).

It was when the two officers had learned of the motives and intentions of the State's Attorney to indict them regardless of their innocence and of the attitude of the Commissioner of Police, that they refused to sign the waiver of immunity for the State's Attorney.

That condition of the record was not considered by either the Civil Service Commission or the Appellate Court. The Civil Service Commission noticed the element of good faith but said that it was beside the point, immaterial. Good faith and innocence of the charge made by the State's Attorney was conceded by the Civil Service Commission.

The Appellate Court did not mention it. If such good faith and innocence is an excusing fact the decision of the Civil Service Commission and the judgment of the Appellate Court must fall.

The Civil Service Commission admits the right of police officers to protection under the constitutional prohibition,

> "No person shall be compelled in any criminal case to give evidence against himself"

and say

> "Under our law the constitutional privilege of individuals (including police officers) when acting in good faith, (a) refuse to testify on the ground that their testimony might incriminate them, or (b) to claim immunity from criminal prosecution as to matters concerning which they are compelled to testify, does not admit of doubt." (Drury Abst. 37.)

However in application of the undeniable facts to that principle the Civil Service Commission held:

> "It may be urged that his (each officer) refusal to waive his constitutional privilege was in good faith but this in our view is beside the point." (Drury Abst. 55.)

The Civil Service Commission then ruled that

> "The question is not whether the respondent exercised a constitutional privilege * * * in good faith but rather whether the exercise of that privilege at all is a violation of his duties as a police officer." (Drury Abst. 43, 55.)

Good faith is tacitly conceded by the Civil Service Commission but it says, in effect, "What of it, good faith means means nothing."

But good faith plus official hostility is a complete defense to the charge of unbecoming conduct, as the doctrine advanced by the Commission denies the right to an op-

pressed and persecuted officer to fight back at a tyranical prosecutor; the denial of such right is not fair play, nor is it law.

The Appellate Court in the course of a long opinion does not discuss the subject of good faith at all, but holds that nothing excuses a policeman from testifying even though he may know his downfall is plotted by a hostile prosecutor to bolster a sagging reputation.

There is no question on this record but that the purpose of the proceedings before the Grand Jury on the afternoon of April 2, 1947 was to accomplish the indictment of officers Drury and Connelly and that the State's Attorney and his assistants were openly hostile to officers Drury and Connelly and that both officers feared and believed they were about to be unjustly indicted. The commission so found (Drury Abst. 49).

Under those circumstances the legal picture changes, the instinct of self preservation asserts itself, and no blame can attach to a refusal to enter a State's Attorney's web of intrigue and sign an immunity waiver in furtherance of his designs. The officers' duty to aid in the investigation of crime then becomes abstract and their personal safety concrete, just the same as the lawyer, the judge, and layman.

That the State's Attorney was hostile, and that the officers were innocent of the crime charged against them before the Grand Jury, stand out in bold relief upon the record.

The Grand Jury had voted a no bill upon the evidence when not under pressure of the State's Attorney but again considered and voted a true bill of conspiracy, after State's Attorney Tuohy personally appeared before them and gave them some advice and some new thoughts.

Vainly the defendants sought a trial of those charges upon the indictment at each succeeding term of the Criminal Court. But the State's Attorney would not try the case and it was finally nollied after four terms. The same charges were preferred here in this proceeding and were tried out by the Commissioners under pressure of an Assistant State's Attorney, yet the officers were found to be innocent of that charge and it was dismissed by the Commissioners.

The hostility of the State's Attorney shows at every turn of events. These officers were not working for or under the State's Attorney but were working under the police commissioner of Chicago, personally, in an effort to clean up unsolved murders. Yet the State's Attorney followed up the refusal of the officers to sign the waiver, and their immediate suspension by the police commissioner at the Grand Jury door, by assigning one of his able assistants to prosecute charges before the Civil Service Commission of Chicago where he had no legal standing, and was recognized by courtesy, in an effort to remove them from the Chicago Poilce force on charges drafted in that full legal phaseology used in the Criminal Court indictments, as if they had come full blown from that source.

In the *Holland* case also the court, recognizing the prosecutor's complex, and some phases of our civilization, said:

> "Judges are not expected to be ignorant of those things which other men, through association and concourse with others in similar walks of life well know. While it is not to be construed as the Opinion of this Court that respondent's fears of an unjust prosecution are well founded and we express no opinion in that regard, yet the facts hereinabove referred to, as well as the common knowledge of those familiar with the processes of the criminal law; that such processes

have at times been used for purposes not founded on the furtherance of justice, must be considered in determining respondents good faith in fearing indictment." (p. 359).

The matters referred to in the quotation above do not have to be proven. They are judicially known.

The guilty went free, the innocent were indicted.

It is to be noted that the alleged assasins were quickly discharged upon motion of the State's Attorney, the perjurers went without day, and their changed testimony was used with which to indict the officers who broke the case.

The irony of it all is that the boast of Guzik that he would have both officers fired, however coincidental, came true, while the alleged assassins and the perjured witnesses went free.

All of which is the result of class legislation and the denial of the equal protection of the laws. To hold that such a basis constitutes cause for discharge and forfeiture of pension rights is itself so far from common justice that it cannot be said to be due process of law.

IV.

Unless the circumstances are such as to require, in honesty and good conscience, that a right or privilege be waived, the possessor of such right be he judge, lawyer or layman is neither legally or morally guilty of a wrong in claiming that right. (From Syllabus, In re Holland, 377 Ill. 346.)

The above is taken from Syllabus No. 2 of *In re Holland*, 377 Ill. 346. It reduces to a principle the purport of that case, and we believe it has application to the case at bar, and petitioners here say that the principle which it an-

nounces, when applied to the circumstances of this case, is decisive of the correctness of the Superior Court judgment and error of the judgments of the Civil Service Commission and the Appellate Court.

Judge Sbarbaro, in deciding this case in the Superior Court, relied upon the *Holland* case and quoted therefrom the following said about a lawyer:

> "Complainants say they are not contesting the right of the respondent to claim his privilege but they say that his duty to refuse to do so is of sufficient importance to require that he be disciplined if he claims the privilege. We are unable to follow the argument of counsel that this would not result in a limitation such as was condemned in *In re Opinion of Justices* referred to (300 Mass. 620, 15 N. E. (2d) 662). To say that one has an absolute right to a privilege, but if he exercises it he will be punished, is to limit his enjoyment of that right, and unless the circumstances surrounding him or duties placed upon him are of such character to require, in honesty and good conscience, that he waive the right, we are unable to see wherein it can be said that an individual, be he judge, lawyer or layman is either legally or morally guilty of a wrong should he claim the right." (Drury Abst. 129).

Judge Sbarbaro noted there was no law, ordinance, rule or regulation requiring a police officer to waive immunity; that the officers had never refused to give evidence of any crimes within their knowledge; that they had testified fully, voluntarily, without reservation before the Civil Service Commission; that they had testified voluntarily before the March Grand Jury on March 17, 1947 and no immunity waiver was then asked of them; and on the charges made in the indictment the Civil Service Commission had found them not guilty; that the indictment against petitioners was

nollied after repeated demands for trial; and drew the conclusion that under all the circumstances of obvious innocence no stigma could attach to the officers for refusal to sign an immunity waiver and that to agree with the Civil Service Commission was to accord the constitutional privilege to the guilty and deny it to the innocent; and we say it furnishes an example of the denial of equal protection of the law.

Petitioners here rely upon the *Holland* case because it establishes the principle that where autocratic power is employed to indict innocent persons they may in good faith refuse to sign immunity waivers or to answer personal questions; and they cannot be questioned elsewhere for relying on the constitutional exemption nor punished for having done so, and the particular profession or employment they may be in can make no difference in principle.

As we believe the *Holland* case announces principles which when applied are conclusive of the merits of this case we will now consider it in its application.

The Appellate Court in its opinion refers to *In re Holland*, 377 Ill. 346 as an authority for its holding that a policeman cannot have the benefit of the constitutional prohibition against a prosecutor compelling him to testify where his indictment is sought. We respectfully suggest that the *Holland* case is susceptible of no such construction.

The *Holland* case is based upon fundamental principles applicable alike to "judge, lawyer or laymlan" as that opinion phrases it.

And the Court there holds that to treat the rule as absolute, where the right is not waived, that the witness is guily of contumacious conduct "is to measure him with an idealism which itself may ofttimes result in injustice a result neither legally nor morally justified" (p. 353).

In the *Holland* case it appeared that Judge Holland of the Municipal Court of Chicago was called before the Grand Jury to testify in an investigation of the gangster murder of one O'Hare with whom Judge Holland had had some business transactions. It was being proclaimed in the news that O'Hare was a gangster front. Judge Holland refused to sign an immunity waiver before testifying but was nevertheless examined by the State's Attorney before the Grand Jury. He answered all questions concerning the murder of O'Hare but refused, under claim of his constitutional rights, to answer as to his business dealings with O'Hare. In resulting contempt proceedings before the Chief Justice of the Criminal Court of Cook County, the rule was discharged on the ground that the constitution exempted him from being a witness against himself and self-incrimination.

The Chicago Bar Association, not satisfied with that judgment, then commenced a proceeding to have the Supreme Court of Illinois discipline Judge Holland, claiming that duty, as a lawyer, rested upon him to aid in the investigation of the O'Hare crime and that because of his claim of privilege he was lacking in good faith and should be disciplined. The court there stated the contention of the amicus curiae in these words:

> "As we understand the position of amicus curiae, it is that a lawyer, though possessing this privilege accorded by the constitution has nevertheless an overshadowing duty as a lawyer to refuse to exercise it in a case such as this, and that his failure to so refuse renders him subject to discipline." (p. 352)

As to that contention the court recognizes that the constitutional right is usually held to be absolute by the one possessing it but says:

"Many human rights are surrounded by equally

> just principles out of which such claimed right can scarecely be said to have arisen, and upon which it may not be based, and those principles may so outweigh the right claimed as to prevent insistence upon it. But to make the general charge that the claimant of such a right is guilty of contumacious conduct if he does not recognize as controlling those surrounding principles and forsake his right, is to measure him by an idealism which itself may oftimes result in injustice, a result neither legally nor morally justified. * * * The right given by the constitution being legal, is, as well a moral right, since the public point of view can scarcely be said to include that which is not moral." (p. 352-353).

Judge Holland had heard that the State's Attorney wanted to see him about the O'Hara crime and he had gone voluntarily to the State's Attorney's office and was examined before a stenographer. It appeared that he and the State's Attorney belonged to hostile factions of the same party and Judge Holland hoped his frankness would smooth over political animosities of other days, but, on the following day head lines appeared in the papers stemming from interviews given out by the State's Attorney affecting him caused Judge Holland to become impressed with the thought that the State's Attorney was about to investigate him instead of the O'Hare murder. Based upon that fear he refused to sign an immunity waiver. The State's Attorney examined him before the Grand Jury anyhow and Judge Holland answered all questions as to O'Hare's death but refused to answer, on Constitutional grounds, questions concerning his personal matters with O'Hare. Judge Holland was then cited for contempt but the Chief Justice of the Criminal Court discharged the rule.

The Chicago Bar Association then instituted the proceedings to disclipline Judge Holland which is the *Holland* case in 377 Ill. 346.

The court, in he *Holland* case, quoed from *People* v. *Forbes*, 143 N. Y. 219, 38 N. E. 303, where a relator had been found guilty of contempt for refusing to testify before a grand jury, while insisting upon his innocence. The reasoning of the New York Court in upholding the privilege of an innocent person in his effort of self-protection, is quoted as follows:

> "The testimony of the witness might be ever so strong and clear in favor of his innocence, but it did not conclude the public prosecutor, in the absence of some constitutional or statutory provision securing the relator from prosecution. The general statements of a person charged with crime in regard to his innocence avail but little against incriminating facts and circumstances. His protestations of innocence, and his broad general denial of any knowledge of or connection with the transaction, might be overcome by facts and circumstances, if the District Attorney could be permitted to draw them from the witness. Any one who has had much experience in the conduct of criminal trials is aware of the fact that frequently the most dangerous proof that a person charged with crime has to meet are his own statements made for the purpose of warding off suspicion or satisfying others with regard to his innocence. It is not unusual on such trials to confront the accused with his own declarations made for the very purpose of exonerating himself from all suspicion, but which, when all the evidence is collected, are so far at war with all the facts and circumstances as to furnish guilt." (p. 354-355).

The late Justice Stone who wrote the opinion in the *Holland* case added his own comments in these words:

> "This is a succinct statement of an important reason for the constitutional safeguard. Without such safeguard any person, judge, lawyer or layman, may be forced to answer questions upon the mere suspicion of the public prosecutor, or in furtherance of a misuse

> of his discretion for political or other improper purposes; or he may be subjected to blackmail through threats of the unscrupulous to procure his prosecution." (P. 355.)

The *Holland* case opinion then quoted from *People* v. *Spain*, 307 Ill. 383, the following as the principle to be followed:

> "When a proper case arises, the constitutional provisions quoted should be applied in a broad and liberal spirit in order to secure to the citizen that immunity from every species of self-accusation implied in the brief, but comprehensive language in which they are expressed." (P. 357.)

The court then pointed out that there was no evidence in the record of any judicial or personal act on Judge Hollands part showing moral turpitude, and further commented:

> "Judges are not expected to be ignorant of those things which other men through association and concourse with others in similar walks of life, well know. While it is not to be construed as the opinion of this court that respondent's fears of an unjust prosecution are well founded, and we express no opinion in that regard, yet the facts hereinbefore referred to, as well as the common knowledge of those familiar with the processes of the criminal law, that such processes have at times been used for purposes not founded on the furtherance of justice, must be considered in determining respondent's good faith in fearing indictment." (P. 359.)

By what the court there said it will be seen that the conduct and motives of a prosecuting attorney are to be recognized as an excusing element in deciding such a question, without necessarily adjudicating the existence of such motives. The possibility of their existence is the controlling thought.

In he *Holland* case Judge Holland's fears of indictment were caused by acts of the State's Attorney. Here there is no doubt about what State's Attorney Tuohy was planning to do and that he was carrying out those plans. He was no longer functioning as the State's Attorney investigating the Ragen murder, he was in effect personally seeking to indict Drury and Connelly and had already presented evidence of the perjured witnesses against them to the Grand Jury. His plans were kept from Drury and Connelly, and his purpose was to surprise them and to have them give testimony against themselves upon which he could secure an indictment and upon which he could convict them. His obvious purpose was to compel them to testify against themselves, to be destroyed if they did, or be destroyed if they did not. In either event he would destroy them.

The law under such circumstances will not require a policeman or any other person similarly situated to waive immunity under penalty of such destruction.

Equal protection of the law was denied.

While a policeman like a lawyer and judge must act in good faith, the law,—the prosecuting officials themselves, who are in effect the law,—likewise must exercise good faith toward the accused. Good faith is not all on one side.

We are contending that a police officer is protected in his consttiutional rights by the same principal announced in the *Holland* case. Mr. Justice Stone in formulating his opinion in that case was not writing for lawyers and judges alone, he was laying down a principle as a basis for his decision, which was then made the decision of the court.

He said twice in the Opinion that it applied alike to "lawyer, judge or layman" (P. 355, 357). And there the Court said that when the witness acted in good faith he could not be disciplined. While that holding was made in a lawyer's case, yet if it be a principle it must apply to all persons, in similar circumstances, who find themselves brought before a Grand Jury with the very purpose of the prosecutor to have them testify against themselves, and to allow the privilege to one and deny it to the other violates the provision of the Fourteenth Amendment prohibiting states from denying equal protection of the laws.

This record admits the innocence of Drury and Connelly. The State's Attorney would not try them after the Grand Jury had indicted them, and the Commission after hearing all the testimony concerning the Grand Jury charge held them to be innocent of the charges so made. The remaining charge was simply that they did not sign a jury waiver when asked.

The defense was innocence and good faith. Petitioners proved themselves innocent and where the State's Attorney was seeking to indict them, though innocent, the rule announced in the *Holland* case is equally applicable to a policeman as to a lawyer, and to deny the operation of that rule was to deny equal protection of the laws.

V.

There is no legitimate basis for the blanket ruling of the Appellate Court that no policeman can refuse to sign an immunity waiver, no matter what the circumstances may be, and the rule here sought to be enforced applies to all public officials and should not be made for policemen alone, as such application is discriminatory and denies equal protection of the law.

The question presented here is a comparatively recent development in legal history. It is an exception grafted upon the constitutional doctrine that no one shall be compelled to be a witness against himself.

The new thought is that a policeman shall not shield himself with constitutional protection when called before a grand jury or court to testify, and if he does, he is to be removed from office. It has been advanced in several cases and some states have constitutional provisions covering the subject; some states have laws; some cities charters, and some boards departmental rules to the effect officials must testify when called.

In 1907 *Scholl* v. *Bell,* 125 Ky. 750, 102 S. W. 248, was decided. It involved some policeman who guarded polling places where fraudulent practices were indulged but who claimed constitutional immunity in resulting litigation against the election officials. The Court gave vent to some vitrolic dicta which has since been quoted as if a necessary adjudication.

In 1931 *Sander* v. *City of Philadelphia,* 305 Pa. 1 156 Atl. 245 arose which involved a captain of police who had become wealthy on a comparatively small salary. When brought before the Grand Jury he gave no satisfactory ex-

planation and when charges were brought against him for unbecoming conduct he made no defense when a transcript of his own evidence was introduced. His discharge was affirmed.

In 1939 *Christel* v. *Police Com. of San Francisco,* 33 Cal. App. (2d) 564, 92 pac. (2d) 416, was decided in a case involving an investigation of the San Francisco police department. The officer had refused to testify before the Grand Jury claiming his constitutional privilege. He was discharged under a departmental rule that required testimony without reservation before a grand jury, and over the claim that the rule was invalid.

In 1940 *Cateline* v. *McClellan,* 282 N. Y. 166, 25 N. E. (2d) 972 was decided wherein there was in question conduct of policemen prior to the effective date of a new constitution which provided for discharge of public officials who should refuse to sign immunity waivers. It was held that the constitutional provision was retrospevtive.

In 1942 in *Goldway* v. *Board of Higher Education,* 37 N. Y. S. (2d) 34 a high school teacher refused to sign an immunity waiver when summoned to appear before a Joint Inquisition Committee. She was not sworn and was discharged under a provision of the New York Charter which so provided.

In 1940 in *In re Grae,* 282 N. Y. 428, 26 N. E. 2d 963 the New York Court of Appeals excused a lawyer who had been suspended because he had refused to sign an immunity waiver in an inquiry ordered by a court into certain unlawful and unethical practices. The lawyer witness said he had no fear of what had been his own conduct but he feared because of his long experience an unfriendly attitude toward him might produce criminal charges if he tes-

tified. The Court of Appeals there held that under such circumstances the lawyer should have the privilege of deciding for himself whether his testimony might tend to incriminate him.

In 1941 the *In re Holland,* 377 Ill. 346 case was decided in Illinois, which involved Judge Holland of the Municipal Court of Chicago. When summoned to testify in the grand jury investigation of the gangster murder of one O'Hare with whom Judge Holland had had some business dealings, he became convinced that the States Attorney was investigating him instead of the murder of O'Hare and claimed immunity accordingly. He was cited for contempt before the Chief Justice of the Criminal Court and the rule was discharged upon hearing. The Chicago Bar Association then filed a proceeding to discipline Judge Holland as a lawyer and that is the *Holland* case referred to herein. The Supreme Court of Illinois, after examining all of the authorities, announced a principle that when such a witness was summoned by a hostile prosecuting attorney pursuing him to destruction he had a right to consult his own safety and decline to put himself in the power of such an adversary.

In the *Kentucky* case the court made some remarks maybe appropriate but angered dicta.

In the *Pennsylvania* case the policeman would not testify before the Civil Service board and deny incriminating facts. He had testified before the grand jury but would not before the Board that tried him, when his statements before the Grand Jury were introduced against him.

In the *California* case there was a departmental rule.

In New York there was a New York City Charter and a New York Constitution and a rule of court to justify proceedings.

In Illinois there is no legislation, ordinance, rule or law to justify this proceeding. Decision must be made upon a principle.

The late Justice Cardoza rendered the majority opinion of the Court in the matter of *William Boyle,* 257 N. Y. 244, in deciding that Boyle, a New York Attorney, was justified in exercising his constitutional right in refusing to testify before a legislative committee investigating the conduct of various departments of the City of New York.

Amongst other things, Judge Cardoza ruled that the majority of the Court maintained that the constitutional privilege against self-incrimination may not be violated because in a particular case its restraints are inconvenient, or because the supposed malefactor may be the subject of public execration, or because the disclosure of his wrong-doing will promote the public weal. The constitutional privilege against self-incrimination is a barrier interposed between the individual and the power of the Government, a barrier interposed by the sovereign people of the state. Neither legislators nor judges are free to overleap it.

At page 265, the Court said:

> "The witness is within his privilege in insisting that the basis for his immunity shall be something more substantial than the grace or favor of the prosecutor who may bring him to the bar of justice . . . To uphold a finding that his conduct amounted to a contempt it must appear that in refusing to answer he was violating a legal, and not merely a moral obligation. The immunity like the obligation must have its source and sanction in the law."

Again at page 268, the Court said:

> "Historic liberties and privileges are not to bend from day to day 'because of some accident of immediate overwhelming interest which appeals to the feel-

ings and distorts the judgments' . . . are not to change their form and content in response to the 'hydraulic pressure' . . . exerted by great causes. A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price for relieving itself of the bother of awaiting a session of the Legislature and the enactment of a statute in accordance with established forms."

The exemption from self-incrimination is still a treasured privilege.

Wigmore says, in his discussion of the rule against self incrimination, that it "exists for the sake of the innocent, or for reasons irrespective of the guilt of the accused ***. For the sake then not of the guilty; but of the innocent accused, and of conservative and healthy principle of judicial conduct, the privilege should be preserved." (Wigmore Vol. VIII, p. 309, Sec. 2251).

An American Bar Committee of 5, three of whom were judges with an advisory committee of 65, one from each state, and territory, and 15 at large reported (1937-8) against abolution of the constitutional privilege and said:

> "We do however think it fit to mention one of the reasons that count against such a proposal, viz: the vehement and sometimes unscrupulous conduct of prosecutions by district attorneys in many communities. Usually young and zealous, moved largely by the desire to make a high record of convictions and thus confirm and assure the electoral choice of their constituents, they conduct the prosecution in a manner which reminds one rather of the traditional methods of the old regime in the continental countries of Europe rather than of a democracy of liberty and fair trials. So until a decided change for the better is observable in the communities where such an attitude

prevails, it is hardly worth while to consider removing the constitutional protection given to an accused by the privilege. We therefore do not recommend its abolition" (Wigmore Vol. VIII p. 316-317 Sec. 2251).

The flat holding of the Civil Service Commission and the Appellate Court that no policeman can avail himself of the constitutional provisions prohibiting a person being compelled to testify against himself is a flat denial of any right to the protection of those provisions under any circumstances regardless of good faith on the part of the officer and bad faith and tyranny on the party of the public prosecutor. No case in the books has gone so far.

The Courts of New York and Illinois have allowed a lawyer in good faith to have advantage of those provision of the constitutions as against a hostile prosecutor. No reason that can be imagined exists why any witness or official so circumstanced may not, on principle, have the same consideration.

To deny the common right is to deny the common or equal protection of the law.

We therefore suggest that the decision of the Appellate Court of Illinois is an unsound and dangerous precedent and should not be allowed to stand unchallenged in judicial literature, and that the holdings in the *Hollad* case and *In re Grae* should be approved, and followed.

To allow the rule as laid down by the Appellate Court to stand operates to deny to officers Drury and Connelly advantage of those constitutional prohibitions as well as to deny due process and equal protection of the laws; and abridges the privileges and immunities as guaranteed by the Fifth and the Fourteenth Amendments to the Federal Constitution.

Respectfully submitted

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